

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Sher Analyst: Darrine Distefano Bill Number: SB 2015  
Related Bills: None Telephone: 845-6458 Amended Date: 04-10-2000  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Charitable Fundraising

### SUMMARY OF BILL

This bill would create several new provisions applicable to a charitable corporation or trustee, commercial fund-raiser, fundraising counsel, or coventurer (charitable organization). It would establish new fees and civil penalties to be applied in the case of specified violations of the Uniform Supervision of Trustees for Charitable Purposes Act (the Act).

This bill would allow the Attorney General (AG) to refuse to register a charitable organization or to revoke or suspend a charitable organization if that entity violates any provision of the Act.

The bill's provisions are addressed by this analysis only as they impact the department.

### SUMMARY OF AMENDMENT

The April 10, 2000, amendments added a civil penalty not to exceed ten thousand dollars (\$10,000) for a person who intends to deceive or defraud any charity or individual. The amendments also deleted language for reimbursement of costs.

This is the department's first analysis of the bill.

### EFFECTIVE DATE

This bill would become effective January 1, 2001, and operative for all provisions after that date.

### SPECIFIC FINDINGS

**Under the Government Code**, the AG's Office is required to maintain the Registry of Charitable Trusts (RCT). The AG has enforcement or supervisory powers over charitable organizations and trustees holding property for charitable purposes. Charitable organizations are required to file reports with the AG regarding donations received and other aspects of their activities.

#### Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

#### Department Director

#### Date

Alan Hunter for G.H.G.

5/25/00

**Under current state law**, the department can disallow an income tax exemption for a charitable organization that fails to file any registration form or other report to the AG for the RCT. In addition, the AG may direct the department to assess the minimum franchise tax on an exempt organization for failure to file any registration or periodic report. The exemption may be reinstated once the organization has registered or filed the periodic report with the AG, but the organization must pay the minimum tax for any year or years for which the exemption was disallowed.

**Under the Revenue and Taxation Code**, nonprofit organizations are not automatically exempt from taxation. A nonprofit organization must apply for tax-exempt status with the department. The department has the authority to suspend the powers, rights, and privileges of an exempt organization for various reasons, including inactivity. An organization may be revived from a suspended status by complying with various requirements, depending on the reason for suspension.

**This bill, under the Government Code**, would do the following:

1. Assess a charitable organization with a late fee or an additional fee of twenty-five dollars (\$25) for each month or part of the month a charitable organization fails to file its registration statement and financial report required under the Act.
2. Specify that all fines, penalties, and attorney's fees paid to the AG could be used by the Department of Justice solely for the administration and enforcement of the Act.
3. Impose a civil penalty, not to exceed ten thousand dollars (\$10,000), for violation of the specified provisions of the Act with intent to deceive or defraud any charity or individual. The first violation of any other provision of the Act would be a fine not to exceed one thousand dollars (\$1,000). Any subsequent violations would result in a fine not to exceed two thousand five hundred dollars (\$2,500).
4. Allow the AG to accept assurance of voluntary compliance with the Act from any person who is alleged to be engaged in any method, act, or practice in violation of the bill's provisions. The assurance of compliance must be in writing and filed with the superior court in this state for approval. The AG may initiate contempt proceedings or proceed as if the assurance of voluntary compliance has not been accepted in the event of an alleged violation.
5. Allow the AG to refuse to register or revoke or suspend the registration of a charitable organization when the AG has found that the provisions of the Act have been violated.

#### Implementation Considerations

This bill leaves unclear whether a charitable organization for which the AG would refuse to register or revoke or suspend registration would become an inactive organization. If these charitable organizations would become inactive, the department would suspend the exempt status of that organization for tax purposes.

FISCAL IMPACT

Departmental Costs

This bill would not impact the department's costs.

Tax Revenue Estimate

This bill would not impact the state income tax revenues.

BOARD POSITION

Pending.